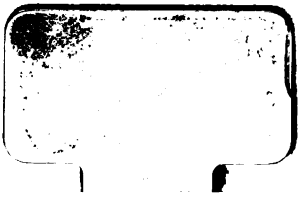

Dr. Wood's Civil Law.
Duck's civil law.
Domat by Strahan.
Justinian by Harris.
Vinnius's Comment.
Heineccius's Civil law.
Ayliff's Pandect.
~~Dr. Taylor's Civil Law.~~
Voet. Hague 1731.
Ridley's views of the Civil and Ecclesiastical law.
Burn's Ecclestical law of England.
~~Chamberlayne's Law of Tithes.~~

Calvin's Dictionary best.
Brisbonius's Dictionary good.
Vultei Jurisprudentia Romana contracta.

In Germany and ~~Holland~~ the Roman law is reckon'd the Municipal law.
It makes a part of the laws of England, and of many other nations. But we reject both the Civil and Canon Law, when it contradicts the Jus Coronæ the Common and Statute Law.

The gift of the Author to John Williams, L. L. B. Vicar of Catherington.

THE

HEADS

OF A

COURSE of LECTURES

ON THE

ROMAN CIVIL LAW

COMPARED WITH THE

LAWS of ENGLAND.

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M.DCC.LXIX.

The Ecclesiastical law of England is made up of the Civil, [i.e Roman] Canon, Common and Statute, law. The Civil submits to the Canon, both to the Common, and all three to the Statute, law. See C. 2. § 7 of this Pamphlet.

After the establishment of the Roman Republic three men were sent to Greece to collect the Grecian laws, and from these the Decemvirs compiled the laws of the 12 tables.

1. The Decrees, of Popes and Cardenals, at no man's suit, in the manner of the Pandect, were perfected by Gratian, a monk, in 1149.
2. The Decretals [illegible] were Rescripts at men's suits, in the manner of the Code
3. The Extravagants of John XXII. in the manner of the Novels.
4. That nothing might be wanting, Lauricellot wrote an Institute of the Canon law by order of Paul IV.

The Legatine [illegible] Constitutions were published with the learned comment of John de Athon.

The Provincial Constitutions, of the Archbishops of Canterbury, published with the learned glosses of William Lindwood are [illegible] There is no understanding the Ecclesiastical matters without being well versed in the Roman law.

By the practice of all Ecclesiastical Courts the Civil Law comes in aid of, and supplies the Canon law in Cases, which are omitted.

THE

HEADS

OF A

COURSE of LECTURES, &c.

PART THE FIRST.

Of the RIGHTS *of* PERSONS.

CHAP. I.

Of the ROMAN CIVIL *and* CANON LAWS, *and their Authority in* ENGLAND.

1. THE Roman CONSTITUTION explained by the Hiſtory of its LAWS.

2. The Imperial or CIVIL LAW, as reformed by JUSTINIAN, is contained in four books; the INSTITUTES, the DIGESTS or PANDECT, the CODE, and the NOVELS.[a]

3. The Eccleſiaſtical or CANON LAW is chiefly comprized in the DECREES and the DECRETALS. Theſe laſt conſiſt of three parts; namely, Gregory's Decretals† in five books, the Sixth Decretal, and the Clementine× Conſtitutions. The EXTRAVAGANTS* of John XXII. were added as Novel Conſtitutions to the reſt.

× about the year 1308. by Pope Clement V.

4. The Canon Law of ENGLAND comprehends, beſides the collections of the

B Roman

a. The Novels, Novellæ, were also called Authentics [illegible]

† Literæ decretales. Distinguish'd from the Constitutions of the Emperors.

* quia vagantur extra corpus canonic[illegible]

[illegible] A.D. 1151.

Roman Pontiffs, LEGATINE and PROVINCIAL Conſtitutions; and ſo far as it was received here before the ſtatute of 25 Henry VIII. and is not repugnant to the Common Law, the Statute Law, and the Law concerning the King's Prerogative, is acknowledged to be in force by the authority of Parliament.

5. The Canons made in England in 1603, and never confirmed in Parliament, ſo far as they are agreeable to the ancient Canon Law, bind the Laity; ſo far as they contain new regulations, are binding on the Clergy only.

6. The fate and fortunes of the Civil Law in EUROPE.

7. There are four Courts in ENGLAND, in which the Civil, and in one of them the Canon, Law is permitted, under different reſtrictions, to be uſed.

The court of Admiralty. Chivalry. Chancery. Exchequer. The Eccleſiaſtical Courts.

CHAP. II.

Of LAW *in general; and of the diviſions and parts of the* CIVIL *and* ENGLISH *Laws.* Inſt. Lib. I. Tit. 1. 2.

1. JUSTICE is a diſpoſition of mind to render to every one his Right. RIGHTS are perfect or imperfect: From the idea of Right is produced that of OBLIGATION.

2. Law

Juſtinian himſelf has eſtabliſhed the canons of the Councils of Nice, Conſtantinople Epheſus and Chaledon.

Britain was governed by the Roman civil law 360 years, i.e. from Claudius to Honorius.

2. LAW is a rule of action, prescribed by authority.

3. All Law is NATURAL or INSTITUTED. In what manner the Law of NATURE, the Law of NATIONS, and CIVIL Law are distinguished from each other by the Roman Lawyers.

4. The Roman people, when assembled to make Laws, were divided three ways, into what were called CURIÆ, CENTURIÆ, TRIBUS: These assemblies were denominated COMITIA CURIATA, CENTURIATA, TRIBUTA.

5. The Roman Civil Laws are of two kinds, WRITTEN and UNWRITTEN. The Written Law is either PUBLIC or PRIVATE.

6. Of the WRITTEN Law there are six parts. 1. LEX. 2. PLEBISCITUM. 3. SENATUSCONSULTUM. 4. MAGISTRATUUM EDICTA. 5. RESPONSA PRUDENTUM. 6. PRINCIPUM PLACITA.

7. The UNWRITTEN Law is CUSTOM.*

8. The Laws of ENGLAND are also of two kinds, the WRITTEN or STATUTE Law, and the UNWRITTEN or COMMON Law.

9. The ECCLESIASTICAL Law of ENGLAND is composed of the CIVIL, CANON, COMMON and STATUTE Laws.

* Custom immemorial, and generally received is called Common Law

1. Lex. enacted by the People, Nobles and Plebeians.
2. Plebiscitum, by the Plebeians only, on a secession from the Nobles
* 4 of the Praetors in the absence of the two Consuls.
2 of the Ædiles curules in some cases

10. EQUITY is the correction of the Written Law, when, on account of its generality, it is too rigid or defective. *Actiones directæ et utiles* explained.

11. The OBJECTS of the Civil Law are I. the Rights of PERSONS. II. the Rights of THINGS. III. ACTIONS, or the Right of recovering by Law what is due.

The civil law of the Romans did not expire even with the Empire itself, but received improvement for above 1000 years in the Roman state & did not expire at last even with the empire itself

CHAP. III.

Of PERSONS *in general*; *and of* FREEMEN *and* SLAVES. Inst. Lib. I. Tit. 3—8.

1. PERSONS are considered either in their NATURAL or CIVIL capacities.

2. In their NATURAL capacity, they are considered with regard to, 1. LIFE. 2. SEX. 3. AGE.

3. In their CIVIL capacity, their State is denominated from a respect to, 1. LIBERTY. 2. CITY. 3. FAMILY.

4. The first division of PERSONS, in a CIVIL consideration, is into FREEMEN and SLAVES. Liberty and Slavery defined.

5. Three Origins of Slavery in the Civil Law. 1. Captivity in War. 2. Birth. 3. The Sale of a Man's self to another. None of these are justifiable causes of slavery.

6. Aristotle's opinion of Natural Slavery confuted.

7. The

7. The Condition of Slaves under the Roman Law: their Offices and Names: their diſtinction into Ordinary and Peculiar: their prodigious Number.

8. The power of a Maſter over his Slave conſiſted in three things. 1. He could put him to death. 2. He could transfer him, by ſale or gift, to whom he pleaſed. 3. Whatever the Slave acquired belonged to his Maſter.

9. This power was greatly abridged by the later Emperors.

10. Freemen were either INGENUI or LIBERTINI.

11. The Condition of the MOTHER determined the State of her Child, as to Freedom or Slavery.

12. If the Mother was free, and the Father a Slave, or unknown; or if the Mother was free at the time of Conception, or of Delivery, or at any time between Conception and Delivery; the iſſue was INGENUOUS, or free born.

13. The Law of ENGLAND differed in this reſpect from the Civil Law.

14. A LIBERTINUS was one, who from a ſlave became free by MANUMISSION. The Rights of the former maſter to the ſervices of ſuch a perſon were called *Jura Patronatûs.*

15. By

15. By the ancient laws of Rome, Liberty could only be conferred three ways. 1. *Cenſu.* 2. *Vindictâ.* 3. *Teſtamento.*

16. Other leſs ſolemn ways of Manumiſſion, introduced by the Roman Emperors.

17. The LEX *Ælia Sentia*, which reſtrained a Maſter from manumitting his Slaves in certain caſes; and the LEX *Fuſia Caninia*, intended to limit Teſtamentary Manumiſſions; and the alterations in theſe Laws by JUSTINIAN; explained.

18. VILLENAGE, as formerly known in ENGLAND, was a ſtate little better than Slavery among the Romans. The ſubjects of this ſtate, if males, were called VILLEINS; if females, NEIFS. A Villein was either *regardant* to a manor, or *in groſs*.

19. By what Steps this Servitude, tho' never formally aboliſhed by any ſtatute, was at laſt, inſenſibly, forgotten.

20. Copyhold Tenures, now ſubſiſting in England, are deſcended from the ancient Villenage.

21. Villeins might be enfranchiſed by MANUMISSION. Forms of enfranchiſement formerly obſerved in England.

22. In what ſenſe a Slave, or Negro, by landing in England, becomes free. The Baptiſm of Heathen Slaves makes no alteration in their civil condition.

CHAP.

CHAP. IV.

Of CITIZENS *and* STRANGERS; NATIVES *and* ALIENS; *by the Roman and Engliſh Laws.*

1. THE ſecond diviſion of PERSONS, in a Civil conſideration, is into CITIZENS and STRANGERS. This diviſion is wholly omitted by Juſtinian in his Inſtitutes.

2. The perſons ſubject to the Roman Government were claſſed under four denominations. They were 1. CIVES. 2. LATINI. 3. ITALICI. 4. PROVINCIALES. Thoſe who neither belonged to the city of Rome, nor to any ſtate ſubject to the Romans, were called HOSTES and PEREGRINI.

3. The privileges of a ROMAN CITIZEN were two. 1. *Jus* QUIRITIUM. 2. *Jus* CIVITATIS. The firſt related to matters of private right; (ſuch as Liberty, Marriage, Paternal Power, Inheritance, Preſcription, &c.) the ſecond to thoſe of public; (ſuch were the *Jus Cenſûs, Suffragii, Honorum, Tributorum, &c.)*

4. No one could be a citizen of Rome and of any other city, at the ſame time. In what ſenſe St. Paul is ſaid to have been a citizen both of Rome and Tarſus.

5. The

5. The privileges of the LATINI and ITALICI did not differ much from each other: they were not obliged to adopt the Laws of Rome; and they had a right of voting in the city, but it was precarious.

6. The PROVINCIALES were entirely governed by the Roman Magiſtrates and Laws. The offices of PRÆSES and QUÆSTOR of a Roman Province explained.

7. Of the ſtates ſubject to the Roman Empire, ſome were MUNICIPIA, others COLONIÆ, others PRÆFECTURÆ.

8. The privileges of a Roman Citizen were conferred, by a conſtitution of Antoninus Caracalla, on all the inhabitants of every part of the Roman Empire, who were INGENUI: Juſtinian extended the ſame privileges to the LIBERTINI. After this laſt regulation, the name of PEREGRINUS was diſuſed, and mankind was diſtinguiſhed into ROMANS and BARBARIANS.

9. The right of Citizenſhip was loſt by Baniſhment. Whether a baniſhed perſon continues a ſubject of the ſtate from which he hath been expelled, examined.

10. Of NATIVES, ALIENS, and DENIZENS, by the laws of England. Of the *droit d' aubaine* or *jus albinatûs*, as practiſed in France.

CHAP.

CHAP. V.

Of the POWER *of the* FATHER. Inſt. Lib. I. Tit. 9. 12.

1. THE third diviſion of PERSONS, in their Civil capacity, is into PATRES FAMILIAS and FILIOS-FAMILIAS.

2. The reciprocal duties of Parents and Children, by the Civil and Engliſh laws.

3. The POWER of a Roman FATHER conſiſted in three things. 1. He could put his child to death; which power formed a domeſtic tribunal in each family. 2. He could ſell him three times. 3. The ſon was incapable of Property.

4. The ſteps, by which this power was reduced by the Roman Emperors.

5. The Natural death of the Father, and the Civil death of either Father or Son, put an end to the *Patria Poteſtas.*

6. Deportation and Relegation, how different: the former only diſſolved the power of the Father.

7. If the Father was taken captive, his power was ſuſpended during his captivity, and on his return revived by what was called *Jus Poſtliminii.*

8. The Father could put an end to his power by EMANCIPATION: the regulations made in this Ceremony by Juſtinian.

CHAP. VI.

Of MARRIAGE. Inſt. Lib. I. Tit. 10.

1. THE *Patria Poteſtas* was acquired three ways; I. By lawful MARRIAGE. II. By LEGITIMATION. III. By ADOPTION.

2. I. NUPTIÆ and MATRIMONIUM, how different: the SOLENNES NUPTIÆ of the Romans were completed FARRE, COEMPTIONE, USU: and might be diſſolved DIFFARREATIONE, REMANCIPATIONE, USURPATIONE.

3. In what ſenſe the Marriage-Contract is ſaid to be formed by CONSENT alone. In what light the Law of ENGLAND conſiders Marriage.

4. Effects of Error, and of Force and Fear, on the Marriage-Contract, conſidered.

5. IMPEDIMENTS to a juſt Marriage, by the Roman Law, were 1. Non-conſent of the Parent. How far this conſent is neceſſary by the Law of England. 2. Want of Age. 3. Want of Citizenſhip. 4. Natural Defects, of mind and body. 5. Conſanguinity. 6. Affinity.

6. The

6. The Rules for computing DEGREES of Conſanguinity, in the RIGHT and OBLIQUE Lines, by the Civil and Canon and Engliſh laws.

7. GENERAL RULE concerning Marriages prohibited on account of Conſanguinity and Affinity: "All ſuch as are *Real* parents and children to each other, or *in the place* of parents and children, are forbid to marry together."

8. In the RIGHT line, Marriages were prohibited *in infinitum*; whether the relation of parent and child were derived from nature, or introduced by adoption, and that diſſolved.

9. In the OBLIQUE line, Marriages of Brothers and Siſters, of the whole blood or half, natural or adopted, whilſt the adoption continued; as alſo of Uncles and Nieces, and of Aunts and Nephews, were forbid: but from the time of the Emperor Claudius to that of Conſtantine, the marriage of a Brother's daughter had been allowed.

10. Why a man was permitted, by the civil law, to marry the daughter of his adopted Siſter, but not the daughter of his adopted Brother; explained.

11. The Marriage of a Great Aunt, or the widow of a Great Uncle, though forbid by the Roman, is allowed by the Engliſh laws.

 12. The

12. The Marriages of firſt Couſins, which, at different times, had been both allowed and forbid by the Emperors before Juſtinian, were by Him declared to be lawful.

13. Marriages in the RIGHT line were forbid on account of Affinity, no leſs than Conſanguinity: In the COLLATERAL line, the old Roman Lawyers compared affinity with adoption, and made the ſame rules govern both; but the conſtitutions of the Emperors forbad the marriages of perſons related by affinity in this line.

14. *Comprivigni*, or children by former marriages of a Husband and Wife, might marry together.

15. The prohibitions of Marriage, on account of Conſanguinity and Affinity, extended equally to Freemen and Slaves.

16. EFFECTS of the Marriage-Contract are, 1. common to Husband and Wife. 2. peculiar to one only.

17. POLYGAMY was condemned by the Roman law, during the republic, and by the Conſtitutions of the Emperors.

18. DIVORCES were *bonâ gratiâ*, or *malâ gratiâ*. *Divortium* how different from *Repudium*.

19. The tradition, that there was no inſtance of a Divorce in Rome, till the year of the city 525, is at leaſt a queſtionable piece of Hiſtory.

20. In

20. In England, Divorces are partial, *a mensa et thoro*; or total, *a vinculo Matrimonii*. The latter, for a canonical cauſe exiſting previous to the contract, may be had in the ſpiritual Court; but for Adultery, can only be obtained by Act of Parliament.

CHAP. VII.

Of LEGITIMATION. Inſt. Lib. I. Tit. 10. § 13.

1. II. LEGITIMATE Children were thoſe born in lawful wedlock; all others were conſidered as ILLEGITIMATE.

2. Illegitimate Children were of four ſorts. 1. Natural Children, or thoſe born in Concubinage. 2. Spurious. 3. *Filii adulterini*. 4. *Inceſtuoſi*. The firſt of theſe were the only objects of Legitimation.

3. LEGITIMATION was procured three ways. 1. By a Subſequent Marriage. 2. By the natural Son being made a Decurion. 3. By Reſcript from the Emperor.

4. BASTARDS, by the laws of ENGLAND, are ſuch children, as are born out of lawful wedlock; nor will the ſubſequent marriage of the parents legitimate ſuch children, as it would by the Civil and Canon Laws.

5. Children born ſo long after the death of the husband, that, by the uſual courſe of nature, they could not be begotten by him, are

are Baſtards. The proceſs in England *de Ventre inſpiciendo* is exactly agreeable to the rules of the Civil Law.

6. Children born during wedlock may, in ſome caſes, be Baſtards.

7. Rights and Incapacities of Baſtards: the different ſenſes of the word *Mulier* in the Engliſh law.

CHAP. VIII.

Of ADOPTION. Inſt. Lib. I. Tit. 11.

1. III. ADOPTION was of two kinds, ARROGATION, and Adoption ſpecifically ſo called: the Ceremonies in both kinds explained.

2. Arrogation, by the old law, could only have place, when the perſon to be arrogated was above the age of Puberty; afterwards a method was found, by which an *Impubes* might be arrogated, on certain conditions.

3. Adoption *in ſpecie* was either *plena* or *minus plena.*

4. He who arrogated or adopted a Son was to be older than that Son by 18 years; in the caſe of a Grandſon, he was to be older by 36 years.

5. Effects of Arrogation and Adoption.

6. Adoption was never practiſed in ENGLAND, nor have we any laws concerning it.

7. In

7. In GERMANY there is a ſort of Adoption, called *Unio ſeu Parificatio prolium*; by which Children by former marriages of Husband and Wife are made equal to one another, in regard to ſucceſſion.

8. The Roman cuſtom of Adoption is frequently alluded to in the New Teſtament.

CHAP. IX.

Of GUARDIANSHIP. Inſt. Lib. I. Tit. 13--26.

1. ANother diviſion of PERSONS, derived from the laſt of Parent and Child, is that of GUARDIAN and WARD. Guardianſhip was of two kinds, I. TUTELA. II. CURA: the Objects of the firſt kind are called PUPILS; of the ſecond, MINORS. In ENGLAND, the GUARDIAN performs the Offices of both TUTOR and CURATOR of the Roman laws.

2. In the Roman Guardianſhip, ſome things were peculiar to each kind, taken ſeparately; others belonged to both in common.

I.

3. TUTELA was of three ſorts; I. TESTAMENTARY. II. LEGAL. III. DATIVE.

4. I. In the TESTAMENTARY Tutelage, it was required, 1. That the perſon appointing ſhould be a Parent, who had the Child under power. 2. The Child was to be an

Im-

Impubes. 3. The Appointment was to be by a Laſt Will.

5. Who were qualified to be Teſtamentary Tutors, by the Roman Law.

6. There are three kinds of Guardians in England: 1. By Common law. 2. By Statute law. 3. By particular Cuſtom. The Gnardian by STATUTE Law anſwers to the TESTAMENTARY Tutor of the Romans.

7. II. When there was no Teſtamentary Tutor *tàm re quàm ſpe*, the LEGAL Tutelage took place.

8. The *Tutor Legitimus*, by the Civil law, was the neareſt relation by the male ſide, to whom the inheritance, in caſe of inteſtacy, would deſcend. The name of ſuch relation was *Agnatus*.

9. The Legal Guardian in England is the neareſt relation, to whom the inheritance, in caſe of inteſtacy, does *not* deſcend.

10. Any ſuch change in the condition of an *Agnatus* as deſtroyed the *Agnatio*, at the ſame time deſtroyed the Legal Tutelage.

11. Such a change of ſtate was called CAPITIS DIMINUTIO; and was of three ſorts, 1. *Maxima.* 2. *Media.* 3. *Minima.*

12. By the later Conſtitutions of Juſtinian, the Mother and Grandmother were ſometimes preferred to the Tutelage, in excluſion of the *Agnati*. The SCTUM VELLEIANUM explained. 13. A

13. A ſecond ſpecies of the *Legitima Tutela* was that of the PATRON to his LIBERTUS; The Patron was expreſsly called, by the Decemviral Law, to the Succeſſion of his Libertus, dying inteſtate; and was therefore virtually called to the Tutelage alſo.

14. A third ſpecies was that of a PARENT to his EMANCIPATED CHILD: this was founded on the ancient Ceremony of Emancipation; by which the Parent was conſidered as a *quaſi-Patronus*, and the Child as his *quaſi-Libertus*.

15. A fourth ſpecies was that called FIDUCIARIA TUTELA: the examples of which are, 1. Of a Father to his Son, Emancipated by the Grandfather. 2. Of a Brother to his Emancipated Brother. 3. Of the *Patruus* to an Emancipated Nephew.

16. WOMEN, by the Roman law, were under perpetual Tutelage: this *Tutela Muliebris* devolved, like that of Pupils, on the *Proximus Agnatus*; but might be transferred by him to the next in degree.

17. III. The DATIVE Tutelage was aſſigned by the Magiſtrate. 1. *ex officio*. 2. When no Tutor by *Will* or *Law* was provided. The LEX *Atilia*, and LEX *Julio-Titia* explained.

18. Of the Regulations in the Dative

Tutelage, made by the Emperors Claudius and Juſtinian.

19. The OFFICE of a Tutor conſiſted in three things. 1. In taking care of the Education of his Pupil. 2. In Adminiſtring his affairs. 3. In giving Authority to the acts of the Pupil. In England, the office of the Guardian is all Adminiſtration.

20. The Tutor was not obliged to give up his accounts till after the expiration of his office: a contrary practice now generally obtains in England.

21. A Pupil, if very near the Age of Puberty, though he could not be under a *civil* obligation, might be under a *natural* one. In matters of crimes and offences, the rule, by the Civil and Engliſh laws, is, *Malitia ſupplet ætatem.*

22. In caſe of a ſuit between Tutor and Pupil, the Prætor appointed another Tutor, in whoſe name the ſuit was carried on: Juſtinian changed this Prætorian Tutor into a Curator, ſpecially created for the purpoſe. The *prochein ami*, or next friend of the Minor, in England, ſupplies the place of this Curator, in the Civil law.

23. The Tutela was ENDED; I. on the part of the PUPIL. 1. By Puberty. 2. By death, natural or civil. 3. By Arrogation.

II. On

II. On the part of the Tutor. 1. By Death, natural or civil. 2. By the office of the Magiſtrate; *volente Tutore, vel invito.*

II.

24. When the Tutela was at an end, the CURA began, and continued from the age of Puberty to 25 years complete. In England, he who moſt reſembles the Roman Curator, is the Guardian, whom a Minor chuſes for himſelf, after he is 14 years of Age.

25. Whether a Curator could be given to a Minor againſt his will, is a queſtion among the Roman Lawyers: Hiſtory of Curation from its beginning.

26. Lunatics, and Prodigals who were reckoned *quaſi* Lunatics, were put under the government of Curators. In England, Idiots and Lunatics have Tutors aſſigned them to protect their *perſons*, and Curators to manage their *eſtates*: but no notice is taken of Prodigals, as in the Civil law.

27. In ſome particular caſes, Pupils, as well as Minors, were under the government of Curators.

III.

28. Before either Tutor or Curator could exerciſe his Office, he gave SECURITY for his fidelity, by what was called *cautio Fide-juſſoria:* When there were ſeveral Tutors or Curators,

Curators, any one that offered the Fidejuſſory caution had the acting part, in preference to the reſt.

29. If the Magiſtrate neglected to take Sureties, or took ſuch as were not good, he was liable to the *Actio ſubſidiaria*, which extended to his heirs.

30. Excuses, by which Tutors and Curators were relieved from the burthen of Guardianſhip, may be reduced to three heads. 1. *Ob Privilegium.* 2. *Impotentiam.* 3. *Exiſtimationis periculum.* The Laws of England are ſilent concerning the Excuſes of Guardians, no one with us being compelled to take the office.

31. Tutors and Curators were liable to be removed by the Magiſtrate, *tanquam ſuſpecti.* Guardians at Common Law may be removed, in England; but there is no inſtance of the removal of a Statute or Teſtamentary Guardian.

CHAP. X.

Of Corporations.

Dig. Lib. III. Tit. 4. Lib. XLVII. Tit. 22.

1. BESIDES the former diviſions of Perſons, conſidered in their Natural and Civil Capacities; there are alſo Ar-

ARTIFICIAL Perſons, called in the civil law UNIVERSITATES and COLLEGIA; and in the laws of ENGLAND, Bodies politic, or CORPORATIONS.

2. Corporations might be CREATED by the voluntary convention of their members, provided ſuch convention were not contrary to law. In England, they may ſubſiſt three ways. 1. By Preſcription. 2. Letters Patent of the King. 3. Act of Parliament.

3. Three perſons, at leaſt, were required to conſtitute a Corporation; though it could ſubſiſt, if the community were afterwards reduced to one. In England, Corporations are either SOLE or AGGREGATE.

4. The members of the ſame Corporation were called *Sodales:* when the power of the whole body was delegated to one perſon to act for them, ſuch perſon was called a *Syndic.*

5. Corporations were poſſeſſed of various powers. 1. They had a common Name, and Seal. 2. They could ſue or be ſued by their common name. 3. Could borrow money by their Syndic, 4. Take lands, with ſpecial privilege from the Emperor. 5. Make laws for their own government, called *Statutes,* and in England *By-laws,* provided they were not contrary to the law of the land.

6. In

6. In Corporations, the act of the major part was eſteemed the act of all; but this major part, by the civil law, muſt have conſiſted of two thirds of the whole.

7. A Corporation, as ſuch, could not commit offences or crimes; but delinquents, in their perſonal capacity, were anſwerable for any misbehaviour: the ſame practice obtains in England.

8. Corporations might be DISSOLVED, 1. By Forfeiture. 2. By the death of all their Members.

PART

PART THE SECOND.

Of the RIGHTS *of* THINGS.

CHAP. I.

Of PROPERTY *in general.* Inſt. Lib. II. Tit. 1. § 1—11.

1. THE ſubjects of Property are called RES, THINGS.

2. In THINGS are to be conſidered, I. Their KINDS. II. The RIGHTS, which may be acquired in them. III. The WAYS of acquiring thoſe Rights.

3. I. Things were either *extra patrimonium*, that is, incapable of being poſſeſſed by ſingle perſons excluſively of others; or *in patrimonio*, that is, capable of being ſo poſſeſſed.

4. Things *extra patrimonium* were of four ſorts. 1. Things COMMON. 2. Things PUBLIC. 3. Things belonging to a Society or Corporation, called RES UNIVERSITATIS. 4. Things conſecrated to Religious Uſes, called RES DIVINI JURIS.

5. Things Common were, 1. The Air.

2. Running Water. 3. The Sea. 4. The Sea ſhore.

6. Things Public were, 1. Rivers. 2. Banks of Rivers. 3. Ports.

7. Things belonging to a Society or Corporation were, 1. Theatres. 2. Places for Races. 3. Market-places. 4. Commons for Cattle, &c.

8. Things conſecrated to Religious Uſes were, 1. the *Res Sacræ*. 2. *Religioſæ*. 3. *Sanctæ*.

9. Things *in patrimonio*, called RES SINGULORUM, were of two ſorts. 1. Corporeal; which included (1.) Moveables. (2.) Immoveables. 2. Incorporeal.

10. By the laws of England, THINGS are diſtributed into two kinds. 1. Things REAL. 2. Things PERSONAL. Things Real conſiſt in 1. Lands. 2. Tenements. 3. Hereditaments; which laſt are 1. Corporeal. 2. Incorporeal. Things Perſonal are called CHATTELS; which are 1. Chattels Real. 2. Chattels Perſonal.

11. II. The SUBSTANCE of Things, in the earlieſt ages, belonged to mankind in common; yet even then, there was a temporary Right to the USE, which ſupplied the place of Property.

12. The inconveniences of ſuch a communion

munion of goods occaſioned, in time, the introduction of a permanent and excluſive Right to the SUBSTANCE as well as USE of Things. This permanent and excluſive Right is called PROPERTY.

13. Property in Things might be 1. In POSSESSION. 2. In ACTION. The former is called DOMINION, or *Jus in Re*: the latter, OBLIGATION, or *Jus ad Rem*. The ſame diſtinction obtains in England, with regard to Property in Things Moveable, or Chattels Perſonal.

14. Dominion in Things is 1. SIMPLE, 2. QUALIFIED. The firſt is called *Dominium Plenum*; and anſwers, in ſome reſpects, to a FEE-SIMPLE in England: the ſecond is called *Dominium minus Plenum*; and is of two ſorts 1. *Directum*. 2. *Utile*. Inſtances of this Qualified Dominion in the Civil and Engliſh laws.

15. Other diviſions of *Dominium* into *Eminens et Vulgare*; *Quiritarium et Bonitarium*, explained.

16. III. The WAYS of acquiring a Right to Things are derived, I. From the Law of NATURE or NATIONS. II. From the CIVIL Law.

CHAP. II.

Of the NATURAL *Modes of acquiring Property.* Inſt. Lib. II. Tit. 1. § 11 — 48. Tit. 8.

1. THE NATURAL Modes of acquiring a Right to Things are three. I. OCCUPANCY. II. ACCESSION. III. TRADITION.

2. I. OCCUPANCY is the taking poſſeſſion of ſuch Things as had been poſſeſſed by no one before, called RES NULLIUS.

3. Under the head of Occupancy are conſidered, 1. The Right of Property in ANIMALS. 2. CAPTURES in WAR. 3. Things FOUND.

4. 1. The right of Property in ANIMALS is different, according to their different kinds. Animals are of three ſorts, *feræ*, *manſuetæ*, *manſuefactæ naturæ*.

5. The Right of Property in Animals that are *feræ naturæ* may be reſtrained by poſitive laws. Theſe reſtrictions may regard 1. the Place. 2. the Perſons. 3. the Animals.

6. 2. Occupancy in WAR extends both to the *goods* and *perſons* of enemies: The Juſtice of

of this acquiſition explained. Captives taken in War, recovering their liberty, were reinſtated in their ancient rights, by the fiction called *Jus Poſtliminii.*

7. 3. Occupancy in Things FOUND relates, 1. to ſuch things as never had an owner: as precious ſtones, gems, &c. found on the *ſurface* of the earth or ſea. 2. to things which ceaſe to have an owner: as TREASURE TROVE, and DERELICTS.

8. TREASURE TROVE is treaſure hidden *in* the earth or other ſecret place, the owner being unknown.

9. DERELICTS are Things wilfully abandoned by the owner, with an intention to leave them for ever. In England, there is no ſuch thing as a DERELICT. Of WAIFS and ESTRAYS in the Engliſh laws.

10. Things loſt by Negligence, or Chance, or thrown away upon Neceſſity, as goods caſt out of a ſhip in a ſtorm at ſea, are not Derelicts. The law of England concerning WRECKS, and the goods called *jetſam*, *flotſam*, and *ligan*, explained.

11. Real Property, by the law of England, cannot now be acquired by the Title of *Common* Occupancy; although that of *Special* Occupancy ſtill ſubſiſts: but this does not extend to ſuch eſtates as are Copyhold.

12. II. Ac-

12. II. Accession is the Right of acquiring the increaſe or improvements made in things that are our own; And is 1. Natural. 2. Industrial. 3. Mixt.

13. 1. Natural Acceſſions are, 1. The Brood of female Slaves and Cattle. 2. River-Increments, or Alluvions. 3. Lands acquired by the Force of a River. 4. Iſlands riſing in the Sea, or in a Public River. 5. Channels deſerted by a River.

14. The Roman laws concerning Natural Acceſſions have been generally adopted by the laws of England; But in the caſe of an Iſland riſing in the Sea, where the Civil law gives it to the firſt occupant, our law gives it to the King.

15. 2. Industrial Acceſſions are, 1. Specification, or producing a new form from another's materials. 2. Conjunction, where two things are joined together, their ſubſtances remaining diſtinct and ſeparate. 3. Confuſion, or the mixture of Liquids. 4. Commixtion, or the mixture of Solids. 5. Building; (1.) on a man's own ground, with another's materials. (2.) on another's ground, with his own materials. 6. Painting. 7. Writing.

16. 3. Mixt Acceſſions are 1. Planting. 2. Sowing. 3. The Fruits gathered, and not

confumed, by the honeſt poſſeſſor of another's property.

17. The doctrine of the Roman and Engliſh laws on Induſtrial and Mixt Acceſſions; and the opinion of Grotius on this ſubject, examined.

18. III. By the old Roman laws, Alienation of things Corporeal was of two kinds; 1. MANCIPATION. 2. TRADITION: the former related to ſuch things as were called *Res Mancipi*; the latter to the *Res Nec Mancipi*. Juſtinian aboliſhed the diſtinction; and gave to TRADITION, or ſimple delivery, all the effects of the ancient Mancipation.

19. No Tradition was good, unleſs 1. preceded by a ſufficient cauſe or *conſideration*. 2. made by one who had the right to alienate. It might happen in ſome caſes, that the real owner could not alienate; and he, who was not the owner, could.

20. Tradition was three-fold. 1. True. 2. Feigned; which was either *brevi manu*, or *longâ manu*. 3. Symbolical.

21. Ways of Alienation of Property by the laws of England, as Feoffment with Livery of Seizin, Leaſe and Releaſe, Fines, Recoveries, &c. explained.

CHAP.

CHAP. III.

Of RIGHTS, *or Things Incorporeal; and of Real and Perſonal* SERVICES. Inſt. Lib. II. Tit. 2—5.

1. RIGHTS in Things are Incorporeal, and capable only of an improper or *quaſi*-poſſeſſion; which is proved from the allowed uſe and exerciſe of thoſe Rights.

2. SERVICES are Rights, which one perſon has in the Land or Building of another; by which the owner is limited in the uſe of his property, and obliged either to *ſuffer* or *not to do* ſomething in his own Land or Building, for the benefit of another perſon, who has a claim upon it.

3. Services are of two kinds. 1. REAL, (which are ſometimes called PREDIAL.) 2. PERSONAL.

4. 1. REAL Services are Rights, which one Eſtate owes to another Eſtate: theſe are 1. RURAL. 2. CITY Services.

5. Rural Services are thoſe belonging to Lands, and are all affirmative. City Services are thoſe, which belong to Buildings for the habitation of Men; and are partly affirmative, partly negative.

6. In

6. In every Real Service it was required, the two Eſtates ſhould be in diſtinct Proprietors: whenever the owner of either became the owner of both, the Service was extinct.

7. 2. PERSONAL Services are Rights, which are owing from an Eſtate to a Perſon. The principal of theſe are 1. USUFRUCT. 2. USE. 3. HABITATION.

8. USUFRUCT is a Right of uſing and enjoying the profits of a thing belonging to another, without impairing the ſubſtance.

9. An Uſufruct properly had place in ſuch things only, as could be uſed without being conſumed; but might be even in things which periſhed in the uſing, called RES FUNGIBILES.

10. If an Uſufructuary died ever ſo little before harveſt, his eſtate, like that of an Incumbent in England with regard to Tithes, was immediately determined; and his heir had no right to the fruits: But if the Uſufructuary had ſowed his land, the heir could deduct for ſeed and expence of tillage.

11. An Uſufruct might be conſtituted 1. by Contract. 2. by a laſt Will: and was ended 1. by the Death of the Uſufructuary, natural or civil. 2. by Conſolidation, when

both the Property and the Fruits came to belong to the ſame perſon.

12. Tenants for life, or for term of years, or at will, in England, reſemble, in ſome reſpects, the Uſufructuary Tenant of the Roman law.

13. USE is a Right of uſing a thing belonging to another, for the purpoſe of ſupplying the daily wants and neceſſities of the uſer, without prejudice to the ſubſtance.

14. HABITATION is a right to live in the Houſe of another, without hurt to the building.

15. He that had the Habitation of a Houſe might ſell or let his Right to another; but he that had the Uſe of a Houſe could do neither.

16. An Uſe, in the law of England, is of as great extent as an Uſufruct in the Civil law; and he that hath the Uſe of LAND hath the Land itſelf: But our laws are ſilent concerning ſuch Uſes and Rights of Habitation, as were among the Romans.

CHAP.

CHAP. IV.

Of the Perſons, by whom Property might be acquired; and of the PECULIUM *of a Son under Power.* Inſt. Lib. II. Tit. 9.

1. PROPERTY might be acquired not only immediately, by a man's ſelf; but alſo mediately, by others whom he had under power; as a Son and a Slave.

2. Yet both a Son and a Slave were allowed to have ſome little Property of their own, which was called PECULIUM.

3. The Peculium of a Son was 1. MILITARY. 2. PAGAN. The Military Peculium was *Caſtrenſe*, or *Quaſi-Caſtrenſe*. The Pagan Peculium was *Profectitium*, or *Adventitium*.

4. The Peculium *Caſtrenſe* and *Quaſi-Caſtrenſe* were entirely taken from the Father, and given to the Son; and he could diſpoſe of both by Will.

5 The Peculium *Profectitium* was wholly acquired for the Father. Of the Peculium *Adventitium*, the Property belonged to the Son, and the Uſufruct to the Father for his life: unleſs the Father emancipated the Son; in which caſe, only half the Uſufruct was kept by the Father.

6. Property might be acquired by means of a Slave, in whom a man had only the Uſufruct.

CHAP. V.

Of the CIVIL *Modes of acquiring Property: And, Firſt, of* USUCAPION *or* PRESCRIPTION; *and of* DONATION. Inſt. Lib. II. Tit. 6. 7.

1. THE CIVIL Modes of acquiring a Right to Things, were, chiefly, three. I. USUCAPION or PRESCRIPTION. II. DONATION. III. SUCCESSION.

2. I. USUCAPION was the acquiſition of Property, founded on continual poſſeſſion, during a time expreſſed by law. PRESCRIPTION was an *Exception*, by which he, who had poſſeſſed a thing for a length of time, defended himſelf in the poſſeſſion againſt the true owner.

3. Uſucapion and Preſcription differed from each other, 1. in the Things acquired. 2. in the Time. 3. in the Effect. Theſe diſtinctions were aboliſhed by Juſtinian; and Preſcription now comprehends the meaning of both terms.

4. In order to acquire a thing by Preſcription, the poſſeſſion muſt be 1. honeſt. 2. found-

2. founded on a juſt cauſe or title. 3. uninterrupted. 4. for a lawful time. 5. the thing itſelf muſt be capable of preſcription.

5. The LEGES *Atinia*, *Julia*, *Plotia*; and the alterations in the Decemviral law, with regard to the *time* of preſcribing, and the *things* capable of preſcription, made by Juſtinian, explained.

6. Services, and other incorporeal things, might be gained by Preſcription. The LEX *Scribonia* explained.

7. Preſcription and Cuſtom are different from each other.

8. Beſides the ordinary Preſcription, there were two others, *Præſcriptio Longiſſimi Temporis*, and *Immemorialis*.

9. Preſcriptions, in the law of England, are of two kinds. 1. Thoſe which ſecure a man from loſs and puniſhment. 2. Thoſe which enable him to acquire a property.

10. By the Common law of England the time of Preſcription is that, of which there is no memory of man or record to the contrary: yet in many inſtances leſs time is ſufficient, both by the Common law, and by acts of Parliament.

11. II. DONATION, why reckoned among the Civil modes of acquiring Property; Is of two kinds, 1. PROPER, 2. IMPROPER.

12. 1. A

12. 1. A PROPER Donation is, when one from mere liberality beſtows any thing on another, not being compelled to it by law.

13. *Donum* and *Munus*, how different: the variety of Gifts among the Romans; their names; the occaſions on which they were made; and the LEX *Cincia*, which regulated and reſtrained them; explained.

14. To the perfection of a Gift were required 1. The Conſent of the Donor and Donee. 2. A Capacity in one to give, and the other to receive. 3. A Capacity in the Thing to be given. 4. Delivery.

15. Gifts exceeding a certain ſum were to be publickly regiſtered, at the time when made. By the law of England, Things Perſonal may be given by Word only; but gifts of eſtates of Freehold, or Leaſes above three years, muſt be in Writing; and thoſe made by a Corporation muſt be in Writing, under Seal.

16. Gifts, perfectly made, might be RECALLED: 1. for Ingratitude. 2. if Inofficious. 3. in one caſe, if afterwards the giver had Children. In England, Gifts, made abſolutely, are Irrevocable.

17. 2. IMPROPER Gifts are 1. thoſe made *propter nuptias*. 2. *mortis causâ*.

18. A Gift *propter nuptias* was a ſettle-

ment

ment which the Husband made on his Wife, by way of ſecurity for her Dos, or Marriage portion. This Dos was 1. *Profectitia.* 2. *Adventitia:* and was conſtituted 1. *Datione.* 2. *Promiſſione.* 3. *Dictione.*

19. The Husband could not alienate his Wife's Dos, even with her conſent. In England, Chattels Real are given to the Husband conditionally, if he ſurvives his wife; yet, while he lives, he can alienate them at pleaſure: but Chattels Perſonal, if reduced to *poſſeſſion*, are given to the Husband abſolutely, by the Marriage; and the Wife has property in nothing but her *paraphernalia*, or wearing apparel.

20. Dos, in the law of England, is not uſed to ſignify the money or land brought by the Wife in Marriage; but means that part of the Husband's Lands, (uſually a third) which the Wife has by Common law, after his deceaſe. But a ſettlement on the wife, previous to the Marriage, which is called a JOINTURE, bars the Dower at Common law.

21. A Gift *mortis causá* is one made in proſpect or contemplation of death: In what reſpects this differs from a Legacy. Donations of this kind are not unknown in England.

22. III.

22. III. SUCCESSION (called in the Civil law HÆREDITAS) is a Right of coming into that eſtate, Real or Perſonal, which a deceaſed perſon had at the time of his death.

23. Such Succeſſion might take place three ways, I. By TESTAMENT. II. By LAW. III. By the BONORUM POSSESSIO granted by the Prætor.

CHAP. VI.

Of SUCCESSION *by* TESTAMENT. Inſt. Lib. II. Tit. 10—19. Tit. 25.

1. PROPERTY naturally ceaſes at the death of the Proprietor; but, by the law of many Societies, may be continued by him, after his deceaſe, in ſuch perſons as he ſhall expreſly name.

2. A TESTAMENT, in the Roman law, is the legal declaration of a man's intentions, which he wills to be performed upon the event of his death, with the direct appointment of an HEIR.

3. In England, the diſpoſal of REAL Property by a laſt Will is called a DEVISE; and the word TESTAMENT is ſtrictly limited to the diſpoſal of Chattels or PERSONAL Pro-

Property, with the appointment of an EXECUTOR.

4. In TESTAMENTS are to be conſidered I. Their ORIGINAL and ANTIQUITY. II. Their KINDS. III. The PERSONS capable of making a Teſtament. IV. The THINGS which a Teſtament ought to contain, to make it valid in law. V. The ways of AVOIDING a Teſtament.

5. I. The power of making PRIVATE Teſtaments was not allowed among the Romans, till the laws of the 12 Tables.

6. The power of Deviſing LANDS ſubſiſted in England before the Conqueſt, and till about the reign of Henry II. when it, generally, ceaſed, in conſequence of the Feudal Tenures: the doctrine of USES revived this power; and the Statute of Uſes (27 Hen. VIII.) again, accidentally, checked it: this occaſioned the Statute of WILLS, (32 & 34 Hen. VIII.) which expreſsly conferred the Right of deviſing, but with ſome reſtrictions with regard to lands held by Knight's Service: the alteration of Tenures in the reign of Charles II. aboliſhed theſe reſtrictions; and the power of Deviſing was then made to extend to the whole of a man's Landed Property. But

Copyhold lands cannot even now be deviſed without licence from the Lord.

7. By the Common law of England, a man could only bequeath one third of his PERSONAL Eſtate by Teſtament; the other two thirds being reſerved for his Wife and Children; whoſe ſhares were called their *Reaſonable Part*: but by modern Statutes, a man may now bequeath the whole of his Chattels, as freely as he can deviſe the whole of his Landed Property.

8. II. Before the laws of the 12 Tables, a Teſtamentary Heir might be made two ways. 1. In the form of a Legiſlative act, COMITIIS CALATIS. 2. IN PROCINCTU, by ſuch perſons as belonged to the army.

9. The 12 Tables gave an abſolute power to every man, to make the law of his own Succeſſion; but preſcribed no *Form*.

10. As a Teſtament was an Alienation of the Teſtator's Property and Family after his death, the Form of Mancipation, uſed in other transfers of Property or Family, was followed in this; which occaſioned a third kind of Teſtament, PER ÆS ET LIBRAM.

11. Afterwards, when Teſtaments came to

to be in Writing, the Prætor took away the Ceremony of the Symbolical Sale; requiring no more to the validity of a Will than ſeven Witneſſes, (inſtead of five required before) and their Seals: This was called *Teſtamentum* PRÆTORIUM.

12. This regulation was followed by another and the laſt, from which was formed the *Teſtamentum* MIXTUM; ſo called, becauſe made up of three ſorts of law, the Civil and the Prætorian law, and the Conſtitutions of the Emperors.

13. A Roman Teſtament was 1. SOLEMN. 2. PRIVILEGED: and both were either WRITTEN, or NUNCUPATIVE.

14. 1. In a SOLEMN WRITTEN Teſtament it was required, that it ſhould be 1. written, or ſubſcribed, by the Teſtator. 2. ſubſcribed, and ſealed, by ſeven perſons, all freemen, citizens of Rome, 14 years of age at leaſt, in the ſight and hearing of the Teſtator, and ſolemnly required to bear Witneſs. 3. that the whole ſhould be done *uno contextu.*

15. The *Condition*, or poſitive capacity, of the Witneſſes was to be judged of, at the time of their atteſtation; yet, by an equitable conſtruction, general reputation was ſufficient.

 16. Nei-

16. Neither the Heir, nor any of his family, could be Witneſſes; but Legatees, and *Fidei-commiſſaries*, might.

17. The omiſſion of any ſolemnity in a Written Unprivileged Will made the whole invalid. Whether, in caſe of a Will defective in Form, the Heir at Law be bound in Conſcience to reſtore the inheritance to the Teſtamentary Heir, examined.

18. In Deviſes of REAL Eſtates in England, it is required, that they be 1. in writing, ſigned by the Deviſor himſelf, or ſome other in his preſence, and by his direction. 2. ſubſcribed by three credible Witneſſes at leaſt, in preſence of the Deviſor. A Legacy given, in ſuch a will, to any of the Witneſſes, is void; and the Will itſelf, in other reſpects, is good: But Creditors are held to be credible Witneſſes, though the Real Eſtate be charged with payment of debts.

19. Teſtaments of CHATTELS in England, if written in the Teſtator's own hand, without his name, or ſeal, or witneſſes preſent; and even if written in another hand, and never ſigned by the Teſtator, if proved to have been agreeable to his inſtructions, are good. But no Legatee is eſteemed a credible Witneſs for the validity of ſuch a

Will, till either the value of his Legacy has been paid him, or he has renounced it.

20. In a SOLEMN NUNCUPATIVE Teſtament it was required, that the Teſtator ſhould declare his Will, by word of mouth, before ſeven witneſſes, ſpecially asked to atteſt it.

21. In England, no Nuncupative Will is good, where the eſtate bequeathed exceeds 30 pounds, unleſs 1. made in the laſt ſickneſs of the Teſtator. 2. at his own houſe, except ſurprized by illneſs, when abroad. 3. proved by three perſons preſent, ſpecially required to bear Witneſs. 4. put into writing, within ſix days from the making, if proved by the Witneſſes after ſix months. Nor will a Nuncupative Will revoke a precedent Written one, unleſs reduced to writing in the life time of the Teſtator, and read over to him, and approved.

22. 2. PRIVILEGED Teſtaments were thoſe, which were valid without the Formalities required in ſuch as were Solemn. Among theſe, the MILITARY Teſtament was the chief.

23. The Privilege of Unſolemn Teſtaments granted to Soldiers extended only to ſuch as were in actual ſervice: and a Will ſo made continued in force a whole year

year after their diſmiſſion from the army.

24. Soldiers and Sailors, in England, have the Privilege of making Informal Teſtaments.

25. Other inſtances of Privileged Teſtaments were 1. Thoſe made by Parents for the benefit of their Children. 2. by Ruſtics. 3. in time of a Plague. 4. publickly Regiſtered. 5. for Pious cauſes. In England, ſeveral Charitable Deviſes have been adjudged good as *Appointments*, which were not valid as Teſtamentary Diſpoſitions.

26. Codicils were Unſolemn Wills, which contained no appointment of an Heir; and might be made by one that died Teſtate or Inteſtate.

27. Codicils differed from Teſtaments 1. In their Formalities. 2. in their Uſe: In England, the diſtinction between them is little more than nominal.

28. A Will defective in Form might often be ſupported by the force of a Codicillary Clauſe: in England, ſuch a Clauſe is of no uſe.

29. Codicils in England are either Written or Nuncupative; and, when regularly atteſted and executed, may be proved, as Wills are.

30. III. All Perſons were capable of making

making a Teſtament, unleſs diſabled 1. by their State and Condition. 2. Want of Diſcretion. 3. Criminal Conduct.

31. 1. Perſons diſabled by their State and condition, were 1. a Son under power. 2. Slaves. 3. Strangers. 4. Deaf and Dumb perſons. 5. Priſoners of War, during their captivity: but a Will made before captivity was good, whether the captive returned, or died with the enemy.

32. In England, the power of a Father is no impediment to a Child's Teſtament: But the power of the Husband will vitiate a Wife's Teſtament of Chattels, unleſs made by his conſent; and ſhe cannot deviſe Lands, even with her Husband's conſent.

33. 2. Perſons diſabled by want of Diſcretion, were 1. thoſe under the age of Puberty. 2. Madmen. 3. Prodigals.

34. In England, a male of fourteen years of age, and a female of twelve, may make a Will of a Perſonal eſtate; but neither of them can deviſe Lands till the age of twenty one.

35. 3. Perſons diſabled by Criminal Conduct, were 1. Traitors. 2. Hereticks. 3. Inceſtuous. 4. Libellers, &c. Certain Criminous perſons are incapable of making a Teſtament, in England.

36. IV. The

36. IV. The appointment of an HEIR to repreſent the Teſtator was an *internal* ſolemnity, which made the eſſence of a Roman Teſtament.

37. He is called Heir, in the Civil law, who ſucceeds to the *whole* eſtate of the deceaſed, Real or Perſonal, without diſtinction. By the law of England, he only is HEIR, who ſucceeds to the *Real* Eſtate by Right of *Blood*; and he that ſucceeds to the *Perſonal* Eſtate, by *Will*, is called EXECUTOR.

38. There were three kinds of Heirs, in the Roman law: 1. NECESSARII. 2. SUI ET NECESSARII. 3. EXTRANEI. In England, all perſons are capable of being Executors, who are capable of making Wills, and many others beſides.

39. 1. NECESSARY Heirs were the Teſtator's Slaves. Effects of the appointment of a Slave for Heir, in the caſes of a *Servus proprius*, *alienus*, *hæreditarius*, *plurium*.

40. 2. *Hæredes* SUI ET NECESSARII were all the Children of the Teſtator, of whatever ſex or degree, born or poſthumous.

41. By the old civil law, if a Father neither inſtituted his Son Heir, nor diſinherited him *by name*, the Will was void: but the ſame omiſſion, in the caſe of a Daughter

Daughter, or of a Grandſon by the Son, did not hurt the Will.

42. Poſthumous Children were of three ſorts. 1. *Sui.* 2. *Alieni.* 3. *Quaſi-Poſthumi.* The birth of a Poſthumous Son or Daughter; or a Grandſon born after the death of the Grandfather, and ſucceeding into the place of his Father; would regularly have voided the Will of a Parent, which was good at the time when made. The Form, contrived by *Gallus Aquilius*, by which ſuch a Grandſon might be inſtituted *conditionally*; and the LEX *Julia Vellæa*, with regard to the inſtitution of the *Quaſi-Poſthumi*, explained. In the diſinheriſon of Poſthumous Children, the Males were to be diſinherited *by name*; and Females *inter cæteros*, with a Legacy.

43. A Teſtator was under no neceſſity from the Civil Law either to inſtitute or diſinherit an Emancipated child: yet the Prætor, in caſe of the preterition of ſuch child, would reſcind the Emancipation, and reſtore him to the inheritance, under colour of being a *Suus Hæres.*

44. By the new law, as reformed by Juſtinian, *all* children, of whatever ſex or degree, born or poſthumous, were to be inſtituted or diſinherited *by name.*

45. In England, a Teſtator may omit or exclude his own children by his Will, and appoint others to be his Heirs or Executors, as he pleaſes: nor does the birth of a Poſthumous child at all affect the Will of a Father.

46. 3. EXTRANEOUS Heirs were all thoſe, who were neither the Slaves, nor the Children of the Teſtator: theſe were ſometimes called *Voluntary* Heirs.

47. Thoſe only could be Extraneous Heirs, who had a capacity to accept the inheritance, both at the time of making the Will, and at the time of the Teſtator's death.

48. A Teſtator might inſtitute one Heir, or more Heirs than one: but no perſon, by the Roman law, could die partly Teſtate and partly Inteſtate.

49. Where one Heir only was inſtituted, he ſucceeded to the whole Inheritance, whether he were inſtituted ſimply or to a part. The whole Inheritance was called AS; it's diviſions and ſubdiviſions explained.

50. When a Teſtator inſtituted more Heirs than one, he might 1. inſtitute them all ſimply. 2. inſtitute ſome with parts, ſome without. 3. allot to each his reſpective part.

51. The

51. The inſtitution of Heirs might be Abſolute, or Conditional. Conditions were of three kinds. 1. Caſual. 2. Poteſtative. 3. Mixed: They were alſo divided into Poſſible and Impoſſible.

52. An Heir could not be inſtituted *from* a certain time, or *till* a certain time: but this law does not obtain in England, with regard to an Executor.

53. An Heir was obliged to make ſome *declaration* of his accepting the Inheritance. This declaration might be made 1. *Cretione.* 2. *Pro hærede Geſtione.* 3. *Immixtione.*

54. By the old law, the Heir was bound to acquit all the burthens of the inheritance, if he once accepted; and therefore had a certain time allowed to *deliberate*, whether he would take on him the office or not: And this indulgence, by favour of the Prætor, was extended even to the *Sui Hæredes* of the Teſtator.

55. The time of Deliberating was afterwards ſuperſeded by the method of making an *Inventory*, introduced by Juſtinian; by which the Heir was not bound to Creditors *ultrà vires hæreditarias*. This method is followed in England with regard to Executors; and until an Inventory be made,

it will be preſumed, the Teſtator hath left *aſſets* ſufficient to pay every debt.

56. An Executor in England, after making an Inventory, is obliged to prove the Will, either in *common form*, or *per teſtes*. The manner of proving it, and the perſons impowered to grant the *probate*, explained.

57. An Executor, after once intermedling with the Eſtate of the Teſtator, cannot renounce his Executorſhip; but is not liable *de bonis propriis* to pay more than he has received.

58. Before Inventories were introduced, the office of an Heir was ſometimes refuſed as dangerous: And upon this foreſight SUBSTITUTIONS, or conditional Inſtitutions, were created. Theſe were. 1. VULGAR. 2. PUPILLAR. 3. QUASI-PUPILLAR.

59. 1. The VULGAR Subſtitution was the appointment of a ſecond or third Heir, in failure of the firſt. If the firſt accepted, none of the Subſtitutes could ſucceed.

60. There might be ſeveral Subſtitutes in the place of one Inſtituted; or one Subſtitute in the place of ſeveral Inſtituted; or the perſons Subſtituted might be the ſame with thoſe who are Inſtituted.

61. In a Reciprocal Subſtitution, if the Teſtator had omitted to expreſs the parts, into

into which he divided the Inheritance, they were underſtood to be the ſame he had expreſſed in the Inſtitution.

62. 2. The PUPILLAR Subſtitution was, when a Father ſubſtituted an Heir to his Children under power, diſpoſing of his own eſtate and theirs, in caſe the child refuſed to accept the inheritance, or died before the age of Puberty. The Father and Child under puberty were eſteemed but one perſon; and therefore one Will, or Teſtament, ſerved for both.

63. No one by Subſtitution could make a Teſtament for his Child, unleſs he firſt made a Teſtament for himſelf; and if the Father's Teſtament became void, that for the Son was void alſo.

64. 3. The QUASI-PUPILLAR Subſtitution related to thoſe Children, who were paſt Puberty, and unable, on account of ſome infirmity of mind or body, to make a Teſtament for themſelves; for whom therefore the Parent was impowered to make a Teſtament, after the *example* of the Pupillar Subſtitution.

65. Entailed Eſtates in England, reſemble, in ſome reſpects, the Subſtitutions of the Roman Law.

66. V. Teſtaments might be AVOIDED two

two ways. 1. By LAW. 2. By the OFFICE of the JUDGE. The difference between *Teſtamentum nullum, deſtitutum, ruptum, irritum*, explained. A Teſtament became Void by LAW, when it was either *ruptum*, or *irritum*.

67. 1. A Teſtament was *broken* 1. by the Agnation, or *quaſi*-Agnation of a *Suus Hæres*. 2. by a change of Will in the Teſtator.

68. A change of Will in the Teſtator might be declared two ways; by cancelling or deſtroying a former Teſtament; or by making a new one of a later date.

69. If the latter Teſtament, revoking the former, was not *perfect* in its kind, the former ſtill continued good. In England, Wills, which concern a Perſonal eſtate, though not finiſhed, are good as to the things already bequeathed: But a Deviſe in writing cannot be revoked, otherwiſe than by ſome other Will or writing, ſigned by three witneſſes.

70. A Teſtament became *ineffectual*, on account of ſome change of ſtate in the Teſtator.

71. A Teſtament, good at the time of making, may become void by a change of ſtate

ſtate, or alteration of circumſtances in the Teſtator, by the Engliſh laws.

72. 2. A Teſtament became Void by the Office of the Judge, by the Action called *Querela Inofficioſi Teſtamenti.* The caſes, in which this action had place, and the regulations concerning it, made by *Juſtinian*, explained.

73. If a Child could come at his Father's inheritance any other way, this was a bar to the *Querela.*

74. No ſuch action as the *Querela* ſubſiſts in England: what moſt reſembled it, was the writ called *Breve de rationabili parte bonorum*, which the Wife or Children of a deceaſed Teſtator had againſt Executors, for recovery of part of the goods. But the cuſtom of reſerving a Reaſonable Part for widows and children, though ſtill in force in the city of London, has, in other places, been aboliſhed by act of Parliament.

CHAP. VII.

Of Legacies. Inſt. Lib. II. Tit. 20—22.

1. A Legacy is a bequeſt or gift of goods left by the Teſtator, to be delivered by the Heir.

2. By

2. By the old Civil law there were four kinds of Legacies; *per Vindicationem, Damnationem, Præceptionem, Sinendi modo*; to each of which was aſſigned a certain form of words: but theſe diſtinctions were taken away by Juſtinian, and Legacies were all reduced to one kind.

3. In Legacies are to be conſidered 1. the Things capable of being left as Legacies. 2. the Perſons capable of receiving them. 3. the Effects and Incidents of Legacies. 4. the Ways, by which they might be Extinguiſhed.

4. 1. Things Corporeal, or Incorporeal, exiſting at preſent, or in futurity, belonging to the Teſtator, or to any other perſon, might be left as Legacies.

5. *Legatum Liberationis, Nominis, Generis, Optionis*, explained.

6 If a Legacy was loſt or periſhed before delivery, without the fault of the Heir, the loſs was to the Legatee; if by the fault of the Heir, he was bound to make it good.

7. 2. All Perſons were capable of receiving Legacies, who could either make a Teſtament, or receive from the Teſtament of another.

8. A Legacy to a poſthumous child was good; as alſo to an uncertain perſon, provided

vided the perſon deſigned by the Teſtator could be diſcovered.

9. An Error in the proper Name or Sirname of the Legatee, or a falſe Deſcription or Cauſe added to a Legacy, did not make it void.

10. A Legacy to a Company or Corporation was good: How far ſuch Legacies are reſtrained by the Statutes of *Mortmain*, in England, explained.

11. Certain perſons are incapable of Legacies, by the laws of England.

12. 3. By the old law, no Legacies left in a Teſtament were effectual, unleſs the Teſtator had firſt appointed an Heir: But this Order was no longer neceſſary, after the times of Juſtinian.

13. If a Legatee died before the Teſtator, the Legacy *lapſed*. In *contingent* Legacies, when the time was joined to the *ſubſtance* of the Legacy, and the Legatee died before the day; it was a lapſed Legacy: When the time was joined to the *payment*, it was a *veſted* Legacy; and if the Legatee died before the day, his right was tranſmitted to his Heirs. The ſame practice obtains in England.

14. In what caſes, and from what time,

a Legacy ſhall bear Intereſt, by the Engliſh laws.

15. A Teſtator was not permitted to exhauſt his whole patrimony in Legacies, and leave nothing for his Teſtamentary Heir. The LEGES *Furia*, *Voconia*, *Falcidia*, explained.

16. By this laſt law, a Teſtator could not give away in Legacies more than three parts in four of his eſtate: the fourth part, thus ſecured to the Heir, was called the *Falcidian* portion.

17. The *Falcidian* portion was eſtimated, according to the value of the inheritance at the time of the Teſtator's death, after the debts and funeral expences were paid.

18. In England, where there is a deficiency of *aſſets*, all general legacies muſt abate proportionably, in order to pay the debts of the Teſtator; and the Legatees, if paid their Legacies, are obliged to refund.

19. 4. Legacies are Extinguiſhed 1. by Ademption. 2. by Tranſlation.

CHAP.

CHAP. VIII.

Of FIDEI-COMMISSA, *or Bequeſts* IN TRUST. Inſt. Lib. II. Tit. 23. 24.

1. FIDEI-COMMISSA, or Bequeſts IN TRUST, were of two kinds. 1. Univerſal. 2. Particular.

2. 1. An Univerſal *Fidei-commiſſum* was the diſpoſal of an inheritance, in whole or in part, to an Heir, *in Truſt* that he ſhould convey it, or diſpoſe of the profits of it, to another. He to whom the inheritance was given in Truſt, was called *Hæres Fiduciarius*; he who had a beneficial intereſt in the inheritance, was called *Hæres Fidei-commiſſarius.*

3. To prevent the Fiduciary Heir from being bound to the Creditors of the deceaſed Teſtator, it was provided by the SCTUM TREBELLIANUM, that all the Actions, which by the Civil law might be brought by or againſt the Fiduciary Heir, ſhould be transferred to the *Fidei-commiſſary.*

4. But as Bequeſts in Truſt were ſtill liable to be defeated, by the Fiduciary Heir refuſing to accept, the SCTUM PEGASIANUM

was made; by which, after the example of the *Falcidian* law with regard to Legacies, the Fiduciary Heir was permitted to retain a fourth part of the Inheritance, if inſtituted Univerſal Heir; or a fourth of his Portion, if inſtituted Heir for a Part.

5. Theſe two *Scta* were afterwards reduced into one, by Juſtinian.

6. A Bequeſt *in Truſt* might be left by Codicil or by Teſtament.

7. The manner, in which a Bequeſt *in Truſt* was proved, in caſe the Fiduciary Heir refuſed to deliver the inheritance, according to the Will; explained.

8. 2. A Particular *Fidei-commiſſum* was the diſpoſal of one particular thing to an Heir, *in truſt* that he ſhould deliver it to another.

9. Such a Particular *Fidei-commiſſum* differed little from a Legacy.

10. Entails at Common law; eſtates veſted in Truſtees for the benefit of a third party; and what are called USES and TRUSTS in the laws of England, are, in many reſpects, ſimilar to the Fiduciary Settlements of the Roman laws.

CHAP.

CHAP. IX.

Of SUCCESSION *by* LAW. Inſt. Lib. III. Tit. 1—6. Novell. CXVIII. Cap. 1. 2. 3.

1. IN caſes, where a perſon hath neglected, or was not permitted, to diſpoſe of his Property, after his deceaſe, by Teſtament; the LAW of each particular Society appoints a Succeſſor, whom it judges, from the principles of reaſon or certain local conſtitutions, to have the beſt right to enter on the vacant poſſeſſion.

2. SUCCESSION by LAW is the Title, by which a man, on the death of his Anceſtor, dying INTESTATE, acquires his eſtate, whether Real or Perſonal, by the right of Repreſentation, as his next Heir.

3. An INTESTATE is one, who dies without a Will; or who leaves a Will, which is not valid.

4. In England, Succeſſion by Law to an eſtate in LANDS is called DESCENT; the Perſon ſucceeding is called the HEIR; and the Eſtate itſelf is called the INHERITANCE. In Succeſſion by Law to an eſtate in GOODS, the Perſons, in whom they were for-

formerly veſted, were the Biſhops, by indulgence of the King; but Biſhops are now compelled to commit their power to certain perſons called ADMINISTRATORS, expreſsly provided by Law.

5. Succeſſion by Law is of two ſorts. 1. *in capita*, when the Inheritance is divided *viritim*, according to the number of perſons, all claiming in *their own* right, as being in equal degree of kindred. 2. *in ſtirpes*, when the Inheritance is divided *gregatim*, the claimants being ſuppoſed to come, by right of *Repreſentation*, into the place of the perſon deceaſed, and dividing that ſhare in common, which he, whom they repreſent, would have had, had he been living.

6. The Roman law, concerning Inteſtate Succeſſion, which is contained in the INSTITUTES, was entirely defeated by the doctrine of the NOVELS.

I.

Of SUCCESSION *by* LAW, *according to the doctrine of the* INSTITUTES.

7. The old Roman law concerning Succeſſions is to be explained from the law concerning the diviſion of Lands; which required that the Property of one Family ſhould not paſs into another.

8. The

8. The old Roman law acknowledged only two Orders in the Succeſſion to an Inteſtate eſtate. I. the SUI. II. the AGNATI. To theſe was added, by the Prætor, a third. III. the Order of COGNATI.

9. I. The SUI were ſuch Children as were 1. in the Family, and under the Power of their Father; and 2. in the firſt Degree.

10. Children born in Concubinage, when Legitimated, were reckoned *Sui Hæredes.*

11. Emancipated Children, though excluded from the *Suitas* by the Civil law, were reſtored to it by the law of the Prætor.

12. Adopted Children, by a Conſtitution of Juſtinian, belonged to the family, and were under the power of their Natural Father; and were only ſo far of the family of their Adoptive Father, as to ſucceed to his goods with his other Children, if he died Inteſtate.

13. It was indifferent, whether the *Suus Hæres* were male or female: Sons and daughters ſucceeded in their own right, *in capita*; Grandchildren from a *Son*, though in ever ſo remote a degree,

ſucceeded, by right of Repreſentation, *in ſtirpes.*

14. Grandchildren from a *Daughter* were not *Sui Hæredes*: but the conſtitutions of the Emperors gave them the rights of the *Suitas*, and put them, nearly, on the ſame foot with Grandchildren from a Son.

15. II. In default of a *Suus Hæres*, the law of the 12 Tables paſſed to the Collateral line, and called in the AGNATI.

16. *Agnati* were thoſe relations, male and female, which came from the ſame Father, though from different mothers.

17. The Decemviral law, in calling the *Agnati* to an Inteſtate inheritance, made no diſtinction of Sex: the *Media Iuriſprudentia* excluded Women, beyond ſuch Siſters as were *Conſanguineæ*: Juſtinian permitted all the *Agnati*, whether male or female, to inherit, according to the prerogative of Degree; and made the *Soror Uterina* equal to the *Soror Germana.*

18. The rights of Agnation were given by Juſtinian to Siſters Children, if the Inteſtate left no brother or ſiſter living; but did not extend to Siſters Grandchildren.

19. If the firſt degree failed, by death or renunciation, the inheritance was not tranſ-

tranſmiſſible to the next, till the times of Juſtinian.

20. In the Collateral line, the right of *Repreſentation* did not take place; but the neareſt degree, whether one or more, excluded all the remoter; and the Succeſſion was always *in capita*.

21. Agnatic Succeſſion has place in DESCENTS, by the laws of England; which, in Collateral inheritances, always prefer the Male ſtocks before the female, unleſs where lands have actually deſcended from a Female.

22. The law of the 12 Tables did not allow Inheritances to *Aſcend*. A Father could ſucceed to his Son, whom he had Emancipated: but this ſucceſſion was founded on the ancient Ceremony of Emancipation; by which the Parent was conſidered as a *quaſi-Patronus*, and the Child as his *quaſi-Libertus*.

23. A Mother and her Child could not ſucceed each other by the Decemviral law. The SCTUM TERTULLIANUM permitted a MOTHER, that had a certain number of Children, to ſucceed to a Son or a Daughter, who had left no Children of their own; but did not allow her to ſucceed to a Grandſon or a Grandaughter.

24. If the inteſtate Child left a Father

and a Mother, the Father was preferred: if a Father and Mother, together with a Grandfather, the Grandfather was preferred to the other two: if a Mother and Grandfather only, the Grandfather was excluded.

25. Brothers by the ſame Father excluded the Mother; Siſters by the ſame Father were admitted with the Mother: if there were both Brothers and Siſters, the inheritance was equally divided between them, and the Mother was excluded.

26. The regulations in the *Sctum Tertullianum*, made by Juſtinian, explained.

27. The SCTUM ORFICIANUM called a CHILD, whether Son or Daughter, to the inheritance of the Mother; as the *Sctum Tertullianum* had called the Mother to the inheritance of her Child: and this privilege was extended, by the Conſtitutions, to Grandchildren, with regard to their Grandmother.

28. Natural Children, and Spurious, were equally favoured, by the *Sctum Orficianum*, with thoſe that were Legitimate.

29. The Iſſue of Baſtards is ſometimes favoured, as to Real eſtates, by the laws of England.

30. III. When both the Orders of *Sui* and *Agnati* failed, whether reckoned by the

the laws of the 12 Tables, or of the Senate, or by the Conſtitutions; the Prætor introduced his third Order of COGNATI.

31. *Cognati* were thoſe relations, male and female, which came by the Mother.

32. The Rights of Cognation were given by the Prætorian law, 1. to ſuch as had once the right of Agnation, but loſt it by a change of Family. 2. to ſuch as never had that right, being deſcended from the Mother. 3. to Spurious children.

II.

Of SUCCESSION *by* LAW, *according to the doctrine of the* NOVELS.

33. In Succeſſion by Law, as ſettled by Juſtinian in the Novels, the diſtinctions between the *Sui* and *Emancipati*, and between the *Agnati* and *Cognati*, were aboliſhed.

34. The Orders of Succeſſion, according to the doctrine of the Novels, were three. I. DESCENDANTS. II. ASCENDANTS. III. COLLATERALS.

35. The Courts in England, which have cognizance of the Diſtribution of Inteſtates effects, in caſes where our laws are ſilent, or

or not ſufficiently expreſs, are chiefly guided by the doctrine of the Novels.

36. I. DESCENDANTS, of whatever degree, male or female, excluded all other relations, whether Aſcendants or Collaterals.

37. By the law of England, INHERITANCES lineally DESCEND, to the Iſſue of the perſon laſt ſeized, *in infinitum*. In the Diſtribution of GOODS, the Statute law gives the ſame preference with the Civil law to Deſcendants, excluſive of Aſcendants and Collaterals; only taking in the Wife of the deceaſed, where there is one ſurviving.

38. Sons and Daughters, that is, the immediate Deſcendants of the deceaſed, ſucceeded *in capita*: in failure of them, Deſcendants of a more remote degree ſucceeded, by Repreſentation, *in ſtirpes*; whether they were alone, or had Uncles to concur with them.

39. In Succeſſion to LANDS, in England, the lineal Deſcendants, *in infinitum*, of a perſon deceaſed, REPRESENT their Anceſtor. In Succeſſion to GOODS, where all the claimants in the Right line are in *equal* degree, the diviſion of the Eſtate is *in capita*; and *Repreſentation* is only

then

then introduced, when neceſſary to prevent excluſion.

40. A child in the Mother's womb was reckoned among the Deſcendants of the deceaſed, by the Civil law. In England, Diſtribution is not made till within one year from the death of the Inteſtate; within which time, all Poſthumous children will be born.

41. In the order of Deſcendants, no regard was had to Primogeniture; and no preference in reſpect to Sex.

42. In England, with regard to LANDS, the Male iſſue is admitted before the female: where there are two or more Males in equal degree, the Eldeſt only inherits; but the Females all together.

43. In the Diſtribution of GOODS of an Inteſtate in England, one third goes to the Widow, and the remainder, in equal portions, to his Children, or to their Repreſentatives: if no Widow, all is diſtributed among the Children: if no Children or Repreſentatives, a moiety goes to the Widow, and the other moiety to the next of Kin, in equal degree, and their Repreſentatives.

44. II. When an Inteſtate left no Deſcendants, and no Collaterals; ſuch ASCENDANTS as were neareſt in degree,

male

male or female, paternal or maternal, ſucceeded to his eſtate, to the excluſion of all the remoter; for, among Aſcendants, Repreſentation was not admitted.

45. When ſeveral Aſcendants concurred in the ſame degree, thoſe on the part of the Father received a moiety, and thoſe on the part of the Mother had the other moiety; without regard to the number of perſons on either ſide.

46. If beſides Aſcendants, there were alſo Collaterals, as Brothers and Siſters of the Whole blood, all ſucceeded in equal portions, *in capita*: But brothers and ſiſters Children, if of the Whole blood, ſucceeded, by Repreſentation only, *in ſtirpes*. Brothers or Siſters of the Half blood, and brothers or ſiſters Grandchildren, were totally excluded.

47. If there was no Father nor Mother, but a Grandfather and a Brother; the Brother excluded the Grandfather: And this ſeems now to be the ſettled practice, with regard to Diſtributions in England. *

48. In

* The words of Nov. 118. c. 2. are, *Si verò cum Aſcendentibus inveniantur Fratres aut Sorores ex Utriſque parentibus conjuncti defuncto, cum* PROXIMIS *gradu Aſcendentibus vocabuntur,* SI *et* PATER *aut* MATER *fuerint*. And the generality of Commentators have underſtood this paſſage, as admitting Aſcendants, whether the *next in degree* or not, and Brothers, to take *jointly*. But *Voet* ſupports the contrary

48. In Succeſſion to LANDS in England, Inheritances never ASCEND; but lands, which came by the Father, *deſcend* to the Heirs on the part of the Father, and lands, which came by the Mother, to the Heirs on the part of the Mother.

49. In the diſtribution of GOODS in England, when a Child dies inteſtate, leaving a Father, but no children of his own; the Father is entitled to the whole: if he leaves no Father, but a Mother, together with Brothers or Siſters, or their Repreſentatives, every Brother and Siſter, and their Repreſentatives, have an equal ſhare with her: Grandfathers and Grandmothers are admitted, in excluſion of Uncles and Aunts: Aſcendants, equal in degree, ſucceed to equal ſhares.

50. III. In the Order of COLLATERALS, when no one was left in the Deſcending or Aſcending lines, there might be 1. Brothers and Siſters alone. 2. Brothers and Siſters, together with brothers and ſiſters Children. 3. Brothers and ſiſters Children alone.

contrary opinion, I think, with the utmoſt clearneſs; and the Lord Chancellor *Hardwicke*, in the caſe of *Evelyn* and *Evelyn*, adopted *Voet*'s interpretation, and decreed in favour of the Brother, to the *excluſion* of the Grandfather. See *Voet* comment. ad Pandectas, Vol. II. Lib. 38. Tit. 17. § 13. and *Burn*'s Eccleſiaſtical Law, Vol. II. p. 722. Ed. 1763.

51. Brothers and Sisters alone, of the Whole blood, succeeded *in capita*, to the exclusion of the half blood: Brothers and sisters Children, concurring with brothers and sisters, succeeded by Representation, *in stirpes:* Brothers and sisters Children alone, succeeded *in capita.*

52. No Representatives were admitted among Collaterals, after brothers and sisters Children.

53. The Half blood succeeded, in default of the whole; and a Nephew of the half blood excluded an Uncle of the whole.

54. If there were neither Brothers nor Sisters, nor their Children, other Collaterals were called in, according to the prerogative of Degree: and if several were found in the same degree, all succeeded *in capita.*

55. In Descents in England, the Whole blood is preferred, and the half blood is entirely excluded: which may sometimes debar a Son from an Inheritance, descended from his own Father.

56. In the Distribution of Goods in England, Brothers and Sisters, whether of the whole or half blood, being in *equal* degree to the Intestate, are entitled to equal shares of his estate: Brothers and sisters Children, concurring with brothers and sisters, succeed *in stirpes*: Brothers and sisters

ſiſters Children alone, ſucceed *in capita*: And no Repreſentation is admitted, beyond brothers and ſiſters Children.

57. By the law of the Code, if no one was left in the Deſcending, Aſcending, or Collateral lines, the Husband ſucceeded to the eſtate of the Wife, and the Wife to the eſtate of the Husband. But this was afterwards altered, by the law of the Novels.

58. In England, proviſion is made for WIDOWS, by *Dower* or *Jointure*; and a HUSBAND, who has married a woman ſeized of an Eſtate of Inheritance, and has iſſue by her, born alive, is, on the death of his wife, Tenant for life *by the Curteſy*.

59. Laſtly, in default of a LEGAL Heir, the eſtate became a *res caduca*, and the FISCUS, or Exchequer, ſucceeded. In England alſo, upon deficiency of Inheritable Blood, Lands ESCHEAT to the King, or to the Lord, of whom they are holden.

CHAP. X.

Of the Succeſſion of the LIBERTI. Inſt. Lib. III. Tit. 7. 8. 9.

1. BY the old law, Slaves, even after Manumiſſion, had no right to Inherit each other. The Emperor Valentinian permitted the Children and Grandchildren

of a LIBERTUS to ſucceed to him, dying Inteſtate; and this privilege was extended by Juſtinian to *all* his Deſcendants, in excluſion of the right of the PATRON.

2. By the Decemviral law, a Libertus might ſecurely paſs his Patron by, in his laſt Will; and, in caſe of Inteſtacy, the Patron then only ſucceeded, if the Libertus left no ſuch children as had the *jus Suitatis*.

3. The law of the Prætor reſtrained the Libertus from paſſing his Patron by, in his laſt Will; and gave the Patron *poſſeſſion of the Goods*, as far as a Moiety, if the Libertus, having no *ſuus hæres* of his own, had left him leſs than that ſum.

4. The LEX *Papia Poppæa* afterwards enacted, that, whether the Libertus died Teſtate or Inteſtate, provided he were one of the richer ſort, and left leſs than three children, the Patron ſhould be admitted to a *pars virilis*.

5. The regulations in the Prætorian law, and in the LEX *Papia Poppæa*, made by Juſtinian, explained.

6. The Patron being dead, his CHILDREN, in the neareſt degree, ſucceeded to the Goods of the Libertus: Unleſs the Patron, by his laſt Will, or otherwiſe, had *aſſigned* the Libertus to any one Child, in preference to the reſt; in which caſe ſuch Child alone had

had the *jus Patronatûs*, and the other children were excluded.

CHAP. XI.

Of SUCCESSION *by the* BONORUM POSSESSIO *granted by the Prætor.* Inſt. Lib. III. Tit. 10.

1. BONORUM POSSESSIO is the Right of purſuing and retaining the Inheritance of a perſon deceaſed, not ſtrictly due by the Civil law, but granted by the Prætor, from a principle of Equity.

2. The *Bonorum Poſſeſſio*, granted by the Prætor, was 1. DECRETAL; when the cauſe was heard judicially. 2. EDICTAL; when the cauſe was not heard judicially.

3. The EDICTAL grant was 1. ORDINARY. 2. EXTRAORDINARY. The ORDINARY grant took place, 1. when there was a Teſtament. 2. when there was not a Teſtament.

4. 1. The Ordinary grant, when there *was* a Teſtament, was 1. *contra tabulas*, in favour of children paſſed by in the Teſtament, without juſt cauſe. 2. *ſecundùm tabulas*, to ſupport a Teſtament, defective in form.

5. 2. The Ordinary grant, when there was *not* a Teſtament, was reduced by

Juſtinian to four kinds. 1. *Unde Liberi*, in favour of Emancipated Children. 2. *Unde Legitimi*, in favour of the *Agnati*. 3. *Unde Cognati*, given to relations on the part of the Mother. 4. *Unde Vir & Uxor*, by which the Husband and Wife ſucceeded each other, when the *Cognati* failed.

6. The EXTRAORDINARY Grant was given to particular perſons, by a ſpecial Law or Conſtitution.

7. The *Bonorum poſſeſſio* could not be claimed, after a limited time.

8. The Adminiſtration of the Goods of an Inteſtate, granted by the Ordinary to his next of Kin, in England, is not unlike the Poſſeſſion of Goods, granted by the Roman Prætor.

CHAP. XII.

Of the Acquiſition of Property by ARROGATION; *and other* CIVIL *Modes of acquiring, mentioned in the Inſtitutes.* Inſt. Lib. III. Tit. 11.12.13.

1. BESIDES the Civil Modes of acquiring Property already explained, Preſcription, Donation, Succeſſion; there are four others, mentioned in the Inſtitutes. I. ARROGATIO. II. ADDICTIO Bo-

BONORUM, LIBERTATUM SERVANDARUM CAUSA. III. SECTIO BONORUM. IV. EX SCTO CLAUDIANO.

2. I. He who paſſed into another family by that ſpecies of Adoption, called Arrogation, transferred himſelf, and all his rights, except ſuch as periſhed by the change of family, to the Arrogator.

3. Juſtinian diminiſhed the power of the Arrogating Father; and ordained that, during the life of his Arrogated Son, he ſhould have a right to nothing, but the Uſufruct of that Son's Peculium *Adventitium*. This was the Acquiſition of Property by ARROGATION.

4. II. If a Teſtator in his laſt Will had given Freedom to Slaves, and the Teſtament afterwards became *deſtitute*; the Slaves loſt their Freedom. To prevent this, the Effects of the deceaſed were by the Prætor *addicted*, or made over, to one or more of the manumitted Slaves, or to any other perſon, who was admitted as Teſtamentary Heir, giving caution to pay the Creditors; and by this means the Slaves obtained their Freedom. This Mode of acquiring Property was called BONORUM ADDICTIO, LIBERTATUM SERVANDARUM CAUSA.

5. III. The

5. III. The Effects of Debtors, in caſe of Inſolvency, were aſſigned by the Prætor to a certain perſon, in order to be *ſold* and divided among the ſeveral Creditors. This was the Mode of acquiring Property *per* SECTIONEM BONORUM.

6. The aſſignment of the Effects of Debtors, as practiſed by the old Civil law, gave place to the law of *Ceſſion*, introduced by the Chriſtian Emperors; by which Debtors were obliged to ſurrender all their Goods to their Creditors, upon Oath.

7. The laws of Bankruptcy in England reſemble the law of Ceſſion among the Romans.

8. IV. If a Free woman fell in love with another man's Slave, ſhe loſt her liberty, and her whole ſubſtance was gained by the Maſter of the Slave. This was the Mode of acquiring Property Ex SCTO CLAUDIANO †; which was aboliſhed by Juſtinian.

† See the Hiſtory of the *Sctum Claudianum* in Tacit. Annal. L. 12. c. 53.

e Novels, or new Constitutions made CHAP.
y Justinian, were called Authentics, because
heir authority was more regarded than that of any
ucceeding Constitutions.

The Plebiscita were by the agreement of the
Plebeians and Nobles incorporated into the Roman Law